

ORIGINAL

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF GRAIN BELT EXPRESS CLEAN LINE)
LLC FOR: (1) A DETERMINATION OF ITS STATUS AS A)
"PUBLIC UTILITY" UNDER INDIANA LAW; (2) A)
DETERMINATION THAT IT HAS THE TECHNICAL,)
MANAGERIAL, AND FINANCIAL CAPABILITY TO)
OPERATE AS A PUBLIC UTILITY IN INDIANA; (3))
AUTHORITY TO OPERATE AS A PUBLIC UTILITY IN)
INDIANA, INCLUDING AUTHORITY TO EXERCISE ALL)
RIGHTS AND PRIVILEGES OF A PUBLIC UTILITY)
ACCORDED BY INDIANA LAW; (4) AUTHORITY TO)
TRANSFER FUNCTIONAL CONTROL OF OPERATION)
OF ITS TRANSMISSION FACILITIES TO BE)
CONSTRUCTED IN INDIANA TO A FULLY)
FUNCTIONING REGIONAL TRANSMISSION)
ORGANIZATION; (5) A DETERMINATION THAT THE)
COMMISSION SHOULD DECLINE TO EXERCISE)
CERTAIN ASPECTS OF ITS JURISDICTION OVER)
PETITIONER CLEAN LINE LLC; (6) AUTHORITY TO)
LOCATE ITS BOOKS AND RECORDS OUTSIDE THE)
STATE OF INDIANA; (7) CONSENT BY THE)
COMMISSION TO BOARDS OF COUNTY)
COMMISSIONERS FOR PETITIONER CLEAN LINE LLC)
TO OCCUPY PUBLIC RIGHTS OF WAY, TO THE)
EXTENT IT MAY BE NECESSARY; AND (8) ALL OTHER)
APPROPRIATE RELIEF)

CAUSE NO. 44264

APPROVED:

MAY 22 2013

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

On November 2, 2012, Grain Belt Express Clean Line LLC ("Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") initiating this matter. On December 3, 2012, Petitioner filed its prepared testimony and exhibits constituting its case-in-chief.

On January 2, 2013, the Commission issued a Prehearing Conference Order that, among other things, established a procedural schedule for this Cause. On January 30, 2013, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its prefiled testimony. Pursuant to the Commission's Docket Entry on March 6, 2013, Petitioner filed its Amended Petition and

Amended Testimony to denote a change in corporate status on March 14, 2013. On March 13, 2013, the parties filed a Settlement Agreement and supporting testimony.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on March 27, 2013, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared by counsel. The parties' evidence was admitted into evidence without objection. No members of the general public participated.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Proper notice of the public hearing in this Cause was published as provided by law. Petitioner plans to engage in providing electric transmission service and facilities and to own, operate, manage and control plant and equipment within Indiana for the transmission of electricity at wholesale, and thus is a "public utility" under Ind. Code § 8-1-2-1. Therefore, Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

2. **Petitioner's Characteristics.** Petitioner is a limited liability company organized under the laws of the state of Indiana, with its principal office at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner is a wholly owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which in turn is a wholly owned subsidiary of Clean Line Energy Partners LLC ("Clean Line"), a Delaware limited liability company, with its principal office located at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner was initially incorporated in Delaware but was converted to an Indiana company as of February 6, 2013, in accordance with Ind. Code § 8-1-2-91.

3. **The Proposed Project.** The Grain Belt Express Clean Line project (the "Grain Belt Project" or the "Project") is an approximately 700-mile overhead, high voltage direct current ("HVDC") transmission line that is proposed to be built to deliver up to 3,500 megawatts ("MW") of wind power from western Kansas to communities in Missouri, Illinois, Indiana, and states farther east. Specifically, the Project as currently planned will originate in western Kansas (the "Resource Area"), will travel east to an interconnection with Ameren Missouri near the Palmyra Tap 345 kilovolt ("kV") substation, and will continue east to an interconnection with Indiana Michigan Power Company ("American Electric Power" or "AEP") at its Sullivan 765 kV substation near Sullivan, Indiana. At Sullivan, the line will interconnect with existing extra high voltage transmission lines for distribution to Indiana and customers served by utilities in the Midwest Independent Transmission System Operator, Inc. ("MISO"), and PJM Interconnection LLC ("PJM") markets. Petitioner will not provide retail services to customers within Indiana. Petitioner's wholesale transmission service is subject to regulatory oversight by the Federal Energy Regulatory Commission ("FERC").

4. **Relief Sought.** Petitioner requests that the Commission find, to the extent necessary, that: (1) Petitioner will be a transmission-only public utility; (2) Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) Petitioner should be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements; (6) Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; (8) certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure; and (9) all other just and reasonable relief.

5. **Petitioner's Case-In-Chief.**

A. **Direct Testimony of Michael Skelly, President and Chief Executive Officer ("CEO") of Clean Line, and President and CEO of Petitioner.** Mr. Skelly testified his experience in the renewable energy business includes 20 years of diverse experience: first, developing thermal, hydroelectric, biomass and wind energy projects in Central America with Energia Global, and then subsequently, joining Horizon Wind Energy ("Horizon"), which he led from a two-person company to one of the leading wind energy companies in the United States. Mr. Skelly testified that Clean Line's objective is to develop, build, and operate HVDC transmission lines to facilitate the development of renewable energy resources, particularly wind generation resources, in the country's best wind regions, and facilitate the delivery of that energy to load and population centers.

Mr. Skelly stated that the Petitioner is developing the Grain Belt Project because there are cost-competitive wind resources available in the Resource Area, there is a demand for renewable wind energy in midwestern states including Indiana and eastern portions of the United States, and there is a lack of adequate transmission infrastructure by which to transport such renewable wind power to the areas of the country that have such demand. Mr. Skelly noted that the country needs long-haul transmission lines to move America's vast renewable energy resources to market. The transmission projects being developed by Clean Line will facilitate billions of dollars of investments in new renewable energy projects; create thousands of new construction and operations jobs; support jobs in manufacturing of wind turbines and components; spur rural economic development; increase property tax revenue for local communities and schools; and reduce carbon pollution by millions of tons. Mr. Skelly verified that Clean Line will sell transmission capacity to renewable energy generators and to the buyers of the power from these wind energy projects.

Mr. Skelly testified that Petitioner will not provide any retail electric utility services in Indiana. Petitioner will provide only wholesale-level transmission services to generators and wholesale purchasers. More specifically, Petitioner will offer transmission service on the Grain Belt Project through an open access transmission tariff (“OATT”), which will be filed with, and subject to the jurisdiction of FERC under the Federal Power Act and FERC’s regulations. Petitioner expects that its customers will consist principally of (1) wind energy producers located in the wind-rich Resource Area at the western end of the Grain Belt Project, and (2) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located in Indiana or connected to the eastern end of the Project through the existing, interconnected transmission grid. Buyers of electricity are expected to be principally wholesale buyers, such as utilities, competitive retail electricity suppliers, including certified alternative retail electricity suppliers, brokers, and marketers.

Mr. Skelly explained that Petitioner has the managerial and technical capabilities to operate as a public utility in Indiana and to construct and operate the Grain Belt Project and provide transmission services as proposed. Clean Line and Petitioner have the financial capabilities to finance the construction of the Grain Belt Project and for Petitioner to operate as a public utility in Indiana. Clean Line’s existing investors will continue to fund the development activities for the Grain Belt Project and the other transmission projects under development by Clean Line’s subsidiaries. Clean Line also has workable plans for raising the additional capital needed to finance the major engineering and construction expenditures for these projects. Clean Line’s principal equity owners, ZAM Ventures, Mr. Michael Zilkha, and National Grid have deep experience in the energy field, including electric power and renewable energy. Mr. Skelly emphasized that with the backing of these investors, Clean Line has secured capital to: (1) perform the work to obtain the necessary permits and approvals for its proposed projects, including the Grain Belt Project; acquire appropriate land options; (2) conduct extensive public outreach; (3) conduct interconnection and other technical studies; and (4) otherwise aggressively conduct development activities for the Grain Belt Project and Clean Line’s other transmission projects up to the point that specific project financing agreements can be negotiated and executed.

B. Direct Testimony of James Glotfelty, Executive Vice President of Clean Line. Mr. Glotfelty testified that he has nearly two decades of experience in the public and private sectors in electric transmission and distribution, generation, energy policy, and energy security. He is the former Vice President, Energy Markets, for ICF Consulting, where he worked with MISO, PJM, the North American Electric Reliability Corporation (“NERC”) and the United States Department of Energy (“DOE”), and many transmission utilities on various projects related to transmission expansion, power system reliability, power market optimization, and the development of renewable and other generation resources. Mr. Glotfelty also testified that he served as a presidential appointee in the U.S. DOE, where he founded and served as the first Director of the Office of Electric Transmission and Distribution, and also led the administration’s electricity policy efforts, which included acting as lead negotiator with the United States Congress on the Electricity Title of the Energy Policy Act of 2005. Mr. Glotfelty’s testimony provided an overview of federal transmission policy objectives and supports the conclusion that the construction of the Project is consistent with federal transmission priorities.

Mr. Glotfelty explained the ratemaking for the transmission rates for the Project, specifically, that Petitioner expects to sell all or a portion of the transmission capacity on the Project through bilateral, negotiated agreements. As a transmission service provider, Petitioner will seek negotiated rate authority from FERC, which will allow Petitioner to negotiate agreements with transmission capacity customers and to recover its costs through such agreements. The agreements will be subject to the requirements of an OATT similar to those used for interstate natural gas pipelines, and are governed by FERC rules and regulations.

Mr. Glotfelty noted that transmission owners in a regional transmission organization (“RTO”), such as PJM, typically recover their transmission investment costs by submitting a cost-based annual revenue requirement to PJM. This annual revenue requirement is the amount needed to recover their operations and transmission investment costs and earn a return on their transmission. In contrast, as noted above, Petitioner intends to collect its costs and earn a return on its investment by selling transmission capacity to customers that specifically contract to purchase the transmission capacity. Mr. Glotfelty also noted that there could be circumstances under which the Grain Belt Project could find it necessary to depart from the cost recovery model described and instead seek cost recovery through regional or inter-regional cost allocation mechanisms. He noted that there are currently no mechanisms in place for interregional cost allocation for a transmission facility such as the Grain Belt Project. However, if a mechanism for interregional cost allocation were to be developed and implemented and were to be widely used by transmission developers and their customers, then for competitive reasons, Petitioner could find it necessary to seek to utilize this mechanism as well.

Mr. Glotfelty emphasized that several leading industry experts have discussed the critical need for transmission investment. Several FERC Commissioners have emphasized the importance of increasing transmission investment. Industry groups and authorities articulated a need to construct additional transmission to support the demand for and development of renewable energy resources. Mr. Glotfelty pointed out in his testimony that the U.S. DOE published a report that highlighted the importance of expanding and strengthening the U.S. transmission infrastructure in order to accommodate greater reliance on wind generation as a source of supply. He also noted that NERC concluded that “[a]dditional transmission infrastructure is vital to accommodate large amounts of wind resources.” He stated that these studies indicate that substantial transmission investment is needed to continue the growth of the U.S. wind power industry. Moreover, in many cases these studies specifically identify long-haul HVDC lines originating in the windiest areas of the central United States as a technically desirable and cost effective solution.

Mr. Glotfelty concluded that independent transmission companies, such as Petitioner, should be certificated as public utilities to build and operate new transmission facilities in Indiana. He noted that unless independent transmission companies are proactive in developing long-distance, interstate transmission lines and are able to obtain the necessary certifications and authorizations from (multiple) state commissions, these much needed facilities may not get built.

C. Direct Testimony of David Berry, Executive Vice President – Strategy and Finance for Clean Line. Mr. Berry described his background, which includes working at Horizon Wind Energy as Finance Director, where he was responsible for financing transactions,

investment analysis and acquisitions. He testified that he worked on and led over \$2 billion of project finance transactions, including a non-recourse debt financing. Mr. Berry further testified that he oversees and is responsible for the financing activities, accounting, transaction structuring, and market analysis for Clean Line and its subsidiaries. He stated that he is responsible for developing the transmission capacity products offered to Petitioner's potential customers, and for raising the capital necessary to fund the development and construction of Clean Line's projects.

Mr. Berry noted that he was testifying in support of Petitioner's request to operate as a public utility in the State of Indiana, including to exercise all the rights and privileges of a public utility under Indiana law, for the Commission to decline to exercise certain aspects of its jurisdiction over Petitioner, and for the Commission to authorize Petitioner to keep its books and records outside the state of Indiana.

Mr. Berry also explained the benefits of Project, which will deliver approximately 15 million megawatt-hours ("MWh") of renewable energy per year. The economic benefits of the Project include cost effectively meeting growing demand for renewable energy, and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines. The Project will also have a positive impact on the environment by reducing the need for energy from other sources that will therefore reduce emissions of carbon dioxide, SO₂, NO_x, and mercury. The Project will also reduce water withdrawal and evaporation required for cooling thermal power plants. Mr. Berry noted that the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM transmission systems, thereby reducing variability, facilitating wind integration, and improving reliability.

Mr. Berry discussed the wind variability between Indiana and Kansas to explain that the Project will not adversely impact Hoosier wind farms. He explained that Indiana exhibits good wind power potential yet, in general, the wind resources in the Resource Area are stronger than those in Indiana due to higher wind speeds, which lead to higher capacity factors. Also, dispersing the locations of wind farms is a very effective way of reducing the variability of their energy output. Because the wind does not blow heavily at the same time in all places, a diversified group of wind plants generates electricity in a more consistent manner than a geographically concentrated group.

Mr. Berry testified that the Project will support Renewable Portfolio Standard ("RPS") requirements and Renewable Energy Credits ("RECs"). He noted that several states in the PJM and MISO footprints have RPS requirements, while several additional states, such as Indiana, have RPS targets or goals. Indiana currently has a voluntary, non-binding clean energy portfolio goal that allows participating utilities to earn financial incentives if they achieve clean energy goals, such as having 10% of their electricity requirements for Indiana customers come from renewable sources by 2025. Though each state has a separate RPS requirement, the markets for renewable energy and renewable energy credits are highly linked across states, similar to the manner in which markets for wholesale electricity are highly linked in different states. RECs, together with multistate wholesale electricity markets like PJM and MISO, allow utilities to

purchase renewable energy without being limited to buying from facilities located within their service territory.

Mr. Berry explained why RPS and RECs matter in Indiana. He noted that Indiana has an interest in other states having adequate resources available to meet their state RPS and goals because if there is a shortfall in other states in renewable energy resources to meet RPS requirements, it will increase REC prices throughout the region, and therefore increase the cost of meeting Indiana's voluntary goal for renewable energy purchases. Second, Indiana is a major player in the wind energy supply chain and Indiana businesses could benefit from manufacturing jobs driven by the construction of wind projects made possible by the Project. Third, environmental benefits are regional or global due to the public nature of clean air and the ability of emissions from fossil-fueled generation sources in one area to migrate to another area.

Mr. Berry further explained that new environmental standards will drive the demand for renewable energy with the retirement of coal plants, and wind has become a cost-effective resource. Because of technological innovations, such as taller towers and longer blades, some wind power purchase agreements ("PPA") are below \$30 per MWh. The Project will enable delivery of 3,500 MW of new, low-cost renewable energy generation into the MISO and PJM markets. These generation resources should increase wholesale competition and reduce wholesale electricity prices.

Mr. Berry also testified about perceived impacts on rates. He explained that because Petitioner is only providing transmission services and participating in wholesale markets, it has not performed an analysis to determine the impact on Indiana's retail rates. However, Mr. Berry noted that because Petitioner does not intend to cost allocate the Project, and because it is privately funded, it will not increase retail rates. Rather, he noted that the Project will bring low-cost wind resources into the area, putting downward pressure on wholesale power prices and benefiting retail customers in Indiana and elsewhere.

Mr. Berry explained that Clean Line has equity investors, including National Grid USA, through its wholly owned subsidiary, GridAmerica Holdings Inc. National Grid USA is a wholly owned U.S. subsidiary of National Grid plc, a major multinational holding company whose principal activities are owning and operating regulated networks for the transmission and distribution of electricity and natural gas. Michael Zilkha is another equity investor, and ZAM Ventures is the majority owner of Clean Line, and is one of the principal investment vehicles for ZBI Ventures, L.L.C. ("ZBI Ventures"), which focuses on long-term investments in the energy sector.

Mr. Berry explained that the initial equity investors provide capital to enable Clean Line to undertake the initial development and permitting work for its transmission line projects, including the Grain Belt Project. The funding provided by the equity investors will enable Clean Line and its subsidiaries to bring the Project, and the other transmission line projects being developed by other subsidiaries of Clean Line, to a point of development at which long-term transmission service agreements can be signed with transmission customers and, on the basis of these agreements, project-specific financing arrangements can be entered into with lenders and with equity investors and/or other partners. The additional capital obtained through these

financing arrangements will allow Petitioner to construct the Project. Mr. Berry stated that he was confident that the project finance markets will support the construction of the Grain Belt Project, noting that the capital markets have a substantial history of supporting transmission projects, including merchant transmission projects, through debt and equity financings.

Mr. Berry explained that Petitioner plans on first obtaining the major regulatory approvals to proceed with the Project and to sell a majority of the capacity on the Project before obtaining construction financing. The transmission capacity contracts Petitioner will offer are long-term transmission capacity contracts, which will provide for a reservation charge, meaning the transmission customer will pay regardless of what percentage of the time the customer uses the reserved capacity.

Mr. Berry also described why it is necessary and appropriate for Petitioner to be allowed to maintain its books and records at its office in Houston, Texas. Mr. Berry explained that the accounting, financial, and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Petitioner, including maintenance of Petitioner's accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Petitioner, due to the nature of its business and operations, will be operating in, and potentially will be subject to the jurisdiction of regulators in at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Petitioner to maintain its books and records in Indiana, or at any location other than the principal office of Petitioner and its parent company in Houston, Texas. However, Mr. Berry noted in his testimony that Petitioner commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible for Petitioner to produce the necessary books and records in Indiana, Petitioner commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner's books and records outside of Indiana.

Mr. Berry testified that Petitioner is requesting that the Commission decline to exercise its jurisdiction with respect to: (1) financing approvals; (2) approvals over purchases and/or sales of facilities (except as necessary to ensure that any purchaser of Indiana facilities has the requisite financial, technical and managerial capability); and (3) certain of the public utility annual reporting requirements. Petitioner believes it is unnecessary for the Commission to exercise jurisdiction over these areas, since Petitioner is a wholesale transmission service provider that will sell transmission under negotiated rates regulated by FERC on an ongoing basis. Petitioner will not have retail customers, nor does it intend to utilize a cost of service model where its costs are directly passed through to retail customers. Accordingly, retail customers will not be impacted by Petitioner's financing activities. Also, as a transmission-only utility operating in multiple states, Petitioner will be regulated by the relevant state commission in each state in addition to FERC. Another traditional area of Commission concern is the reliability of retail service. Petitioner's transmission activities will not directly implicate the reliability of retail service or the distribution network owned by other Indiana utilities. The Grain Belt Project's deliveries to PJM and MISO will be strictly controllable due to the use of

HVDC technology, with the RTOs, FERC and NERC monitoring and regulating the reliability of the high voltage grid. Further regulation of these matters by the Commission would be unnecessary, wasteful of the Commission's resources, and burdensome for Petitioner.

Mr. Berry offered in his testimony that while development and construction are ongoing, Petitioner proposed to provide the Commission with annual updates on the Project, summarizing the Project construction and operational status and financing milestones, including: Identification of major construction vendors and contractors hired, identification of major operation and maintenance contractors retained, significant new debt and equity financings completed at the Petitioner level, significant changes in Clean Line or Petitioner senior management, and in-service/commercial operation date of the Project. Once the Project is completed and in service, in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49, Petitioner proposed to file annually with the Commission its FERC Form 1, which will cover all of Petitioner's assets and revenues. Petitioner also offered to commit to file annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions. Mr. Berry also noted that Petitioner will maintain its books and records of account in accordance with FERC's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.

D. Direct Testimony of Dr. Anthony Wayne Galli, Vice President – Transmission and Technical Services, Clean Line. Dr. Galli testified that he oversees and is responsible for the planning, engineering, design, construction, and other technical activities of Clean Line and its subsidiaries with respect to their transmission projects, and plays a role in Clean Line's long-term strategic planning. Explaining some of his technical and managerial capabilities, Dr. Galli noted that he is a Senior Member of the Institute of Electrical and Electronics Engineers, a member of the International Council on Large Electric Systems, and a registered Professional Engineer in the Commonwealth of Virginia. Dr. Galli explained that he has more than 15 years of experience in the electric transmission industry, in both technical and managerial roles, ranging from power system planning and operations to regulatory matters and project development. He served as Director of Transmission Development for NextEra Energy Resources (formerly FPL Group, Inc.), where he developed transmission projects under the Competitive Renewable Energy Zones ("CREZ") initiative in Texas, concentrating on the development of HVDC transmission solutions. He also worked at the Southwest Power Pool ("SPP") for six years, leading the implementation of several components of the SPP market, and grew the SPP Operations Engineering Group over fourfold to help ensure reliable operations of the SPP grid as it moved toward a market paradigm. He was also the Supervisor of Operations Engineering at SPP, responsible for the real-time and short-term engineering support of the SPP's RTO functions.

Dr. Galli noted that the purpose of his testimony was to describe the status of the interconnection processes underway for the Project, including Petitioner's interactions with PJM, SPP, and MISO to process the interconnection requests, and to obtain the interconnection agreements and other approvals necessary from these RTOs to proceed with the Project. Dr. Galli's testimony also described the reasons for and benefits of Petitioner's proposed use of

HVDC technology for the Project, and addressed Petitioner's managerial and technical capabilities to be certificated as a public utility providing transmission-only services and to construct, own, operate, and maintain the Project.

Dr. Galli explained that the Grain Belt Project will run from a point to be located in or around Ford County in western Kansas ("Resource Area") to the MISO (Ameren Missouri – "Ameren") 345 kV transmission system in Missouri and then on to the PJM (Indiana Michigan Power Company, American Electric Power – "AEP") 765 kV transmission system in Indiana. The Grain Belt Project will be an approximately 700 mile, +/-600 kV HVDC transmission line that will be capable of delivering up to 3,500 MW of power, or approximately 15 million megawatt-hours of energy per year, from its western end to its eastern end. The line will continue through Illinois and traverse less than two miles into Indiana to interconnect with the AEP 765 kV Sullivan substation in Sullivan County, Indiana.

Dr. Galli noted that in developing the specific route of the Project, Petitioner worked with land use and routing experts, landowners, local government officials, state and federal agencies, and other stakeholders to develop and refine potential routes for the transmission line. Further, Petitioner engaged with subject matter experts on topics such as threatened and endangered species, archaeology, and cultural resources to ensure all appropriate considerations are taken into account in the routing decisions.

Dr. Galli explained that facilities located within the state may consist of up to four 345 kV circuits or up to two 765 kV circuits, with the likely scenario being that three 345 kV circuits will be constructed. Other facilities to be constructed in Indiana may include substation equipment, such as transformers to aid in interconnection with the existing Sullivan substation. Precise interconnection requirements will be determined through the PJM interconnection studies that are currently underway in coordination with AEP; these studies will also ultimately determine the robustness and appropriateness of interconnecting at the Sullivan substation.

Dr. Galli noted that Petitioner intends to participate in all of the affected RTO regions, namely, SPP, PJM, and MISO. Petitioner intends to join at least one of these RTOs as a transmission-owning member, and turn over functional control of its facilities to that RTO. Petitioner will participate, as allowed, in SPP's, PJM's and MISO's regional planning and voting processes, and intends to provide only wholesale transmission service and will not participate in any generation-owning or load serving capacity in any RTO.

Dr. Galli explained that all generation and transmission projects that connect to or have an impact on a given RTO will eventually be incorporated into the regional plan. The Grain Belt Project, therefore, will be included in SPP's, MISO's, and PJM's regional transmission expansion plans at some point in the future. While the Project is not yet included in PJM's or MISO's current regional transmission expansion plans, the Project is currently undergoing interconnection studies through the PJM queue. MISO does not include interconnection queue projects in its regional transmission plan (the MISO Transmission Expansion Plan or "MTEP") until interconnection projects have entered the Definitive Planning Phase of the interconnection study process. With the interregional nature of the Project, definitive planning has been delayed until the PJM studies have been completed.

Dr. Galli testified Clean Line and Petitioner have established a management and technical team with significant experience in the relevant project development, technical, and regulatory arenas for projects such as the Grain Belt Project. Dr. Galli further noted that POWER Engineers, Inc. (“POWER”) provided preliminary transmission line engineering support for the Project. POWER provides engineering/design, construction, asset management, and other services to the power generation and power delivery industries and other industries. POWER has developed preliminary design criteria for the Project and will provide structure designs and engineering support during the route development process; and Petitioner anticipates utilizing POWER for preliminary engineering on the 345 kV or 765 kV lines from the converter station to the Sullivan substation.

Dr. Galli testified that for operation of the Project, it is premature to determine exactly how and by whom the line will be physically controlled as part of the electric grid; however, there are three options by which Petitioner can effectuate physical control. First, Petitioner may develop an operations center to be manned 24/7 with NERC certified operators; second, Petitioner may, on a contractual basis, have the physical control performed by a local utility with sufficient personnel and computing and telecommunications infrastructure; and third, Petitioner may contract with an entity that specializes in performing such functions on a third party basis. Petitioner expects to turn over functional control of its facilities to an RTO – namely either PJM or MISO – as required by FERC as a condition for authorization to negotiate rates.

He noted that it is premature to determine details of maintenance and operations, but it is likely that Clean Line will contract with a firm or firms experienced in electric transmission maintenance and operations to provide maintenance services and also capital replacements and upgrades as necessary. Clean Line is most likely to employ full-time workers directly for the maintenance of the converter stations, although it is possible some or all of these workers could be employed by a contractor. It is also possible that Clean Line could contract with an interconnected utility for maintenance at interconnection switchyards.

Dr. Galli testified that Petitioner is prepared to comply with all applicable NERC reliability standards in operating the Grain Belt Project. He explained that Petitioner expects to be registered on the NERC Compliance Registry for the reliability functions of a “Transmission Owner,” a “Transmission Operator,” and a “Transmission Service Provider” (depending on the nature of its arrangements with a third party or parties to operate the Grain Belt Project, which could result in some or all of the Transmission Operator or Transmission Service Provider functions being assigned to the third party). Therefore, Petitioner will be subject to applicable requirements of one or more NERC reliability standards in several categories. Petitioner will be prepared to comply with the requirements of the reliability standards that are applicable to its activities.

Dr. Galli explained why Petitioner decided to utilize HVDC technology for the Project. He noted that HVDC is a more efficient technology for the long-haul transmission of large amounts of electric power because substantially more power can be transmitted with lower losses, narrower right-of-way, and fewer conductors than with an equivalent high voltage Alternating Current (“HVAC”) system. The use of HVDC technology is a particularly

appropriate solution for the Grain Belt Project (and Clean Line's other current transmission projects), for moving large amounts of power from variable generation sources (such as wind farms) over long distances, primarily or exclusively in one direction.

Dr. Galli explained how DC technology differs from AC technology. In AC systems, the voltage and current periodically change directions. In most of North America, one cycle of positive to negative is completed in approximately 16.67 milliseconds (or 0.01667 seconds); said another way, in one second, 60 cycles are completed (which is defined at 60 Hertz ("Hz")). AC, of course, is the same type of electricity that is delivered to our houses, offices, commercial and industrial facilities. In DC systems, the voltage and current are not time-varying. That is, they hold a steady value over time. This is the type of electricity that is produced by, for example, a car battery. As stated above, high voltage DC systems are especially suited for moving large amounts of power over long distances. The HVDC technology that Petitioner plans to use for the Project is not an experimental or recently introduced technology. HVDC technology has been used and proven for several decades. In North America, there are over 30 HVDC installations, dating back as far as 1968. Of the 30-plus projects, there are 11 HVDC lines in North America that have a combined capacity of approximately 14,000 MW.

Dr. Galli lastly explained the structures that will be located within the state as a result of the Project. He noted that the two primary structure types have been identified are lattice structures and tubular steel "monopole" structures. Petitioner has not made a determination as to the final structure type. For the portion of the Project within Indiana, depending upon whether the lines are constructed at 765 kV or 345 kV, the structure types and spacing would be similar (designed to carry three phases as opposed to two poles) but would have different height and clearance requirements as dictated by the National Electric Safety Code and any applicable state or local codes; however, the assumed ruling span of 1,500 feet for lattice and 1,200 feet for tubular steel poles are reasonable assumptions at this time.

E. Direct Testimony of Diana (Coggin) Rivera, Project Development Manager of the Grain Belt Project. Ms. Rivera testified as to her education and expertise including obtaining a Bachelor of Science degree in Operations Research and Industrial Engineering from Cornell University, working for General Electric, where she obtained certification as a Lean Six Sigma Black Belt, and earning her Masters of Business Administration from Harvard Business School. Ms. Rivera noted that she is responsible for managing all aspects of the development of the Grain Belt Project, including public outreach, siting, regulatory and environmental permitting, and technical studies. Ms. Rivera testified about the need for the Project, the benefits of the Project, Petitioner's public outreach process, its routing process, and the other regulatory approvals and permits Petitioner needs in order to construct the Grain Belt Project.

Ms. Rivera stated that wind power is most cost effective in regions where average wind speeds are the highest. In the U.S., the highest onshore wind speeds are predominantly located in sparsely populated areas like the Great Plains, where the demand for electricity is relatively low and the existing electrical infrastructure is relatively weak. The lack of robust transmission lines to connect the windiest areas to load centers has limited the growth of wind power in the U.S. In 2011, wind generation supplied only 3.3% of the total electric power demand in the United

States. Other industrialized nations, such as Denmark (29%), Portugal (19%) and Spain (19%), obtain significantly higher percentages of their electricity demand from wind power. The U.S. has more than enough wind to supply even greater percentages of its electricity needs with wind power, but transmission lines are needed to carry that power to market.

Ms. Rivera noted that in many states, utilities are required to procure 15% to 25% of their energy from renewable resources. In the present environment, wind is the least cost option to meet these goals, but reaching the needed levels of wind penetration is not possible at a reasonable cost without a broad transmission build-out to connect the best resources to load centers. The Grain Belt Project can help to fulfill the demand for renewable energy in the MISO and PJM regions by delivering some of the lowest cost renewable energy available in the United States.

Ms. Rivera testified that while recent economic conditions have reduced demand for electricity in general, retirements of significant amounts of fossil-fueled generation capacity is expected over the next ten years in both MISO and PJM. As of October 2011, MISO had received 2,500 MW of retirement requests from coal-fired power plants and estimated that more than 12,000 MW of coal generation capacity are at risk for retirement. Due to Indiana's heavy reliance on coal, the rate impacts of environmental regulations are likely to be more pronounced in Indiana than in many other states. The Grain Belt Project can help Indiana and other PJM and MISO states meet growing demands for electricity with low-cost, clean, and reliable wind energy. The Project will allow thousands of MWs of new, competitively priced wind energy projects to be built to serve consumers in Indiana and throughout the Midwest and the eastern United States, which will help to offset increasing electricity costs from coal retirements and environmental regulations.

Ms. Rivera noted several benefits of the Project, including the fact that customers in the Midwest and states farther east will benefit from lower wholesale electricity prices as a result of increased market competition. The Grain Belt Project will give load serving entities access to abundant, low-cost, renewable energy sources in the Great Plains and facilitate construction of thousands of MW of new wind power generation capacity. Also, the Grain Belt Project will result in substantial economic benefits in Kansas, Missouri, Illinois, and Indiana, and throughout the region. Businesses, communities, and individuals across the Project area will benefit from the construction and operation of the Project and the resulting wind farms. The Project is estimated to create more than 5,000 jobs for the construction of the transmission line and resulting wind farms, and Petitioner intends to use qualified local vendors to construct the transmission line and to provide services like surveying, right-of-way clearing, grading, and many others. Ms. Rivera noted that most of the construction jobs will be located outside of Indiana, but there is a good possibility that components of the wind turbines or transmission line may be manufactured in Indiana. In addition to businesses, local governments across the Project area will also benefit from increased tax revenues from the transmission line during and after construction.

Ms. Rivera testified to the extensive community outreach that Petitioner has performed, including meeting with Kansas, Missouri, Illinois, and Indiana's governing administration, with legislators in every district within the Project study area, and others on energy or utilities

legislative committees. Ms. Rivera testified that the precise route of the Project has not been finalized, but the goal is to identify a route for the Project that minimizes impacts on natural resources, cultural resources, and current and future land uses in the Project area, while avoiding non-standard design requirements and unreasonable costs. Based on the proposed point of interconnection at the Sullivan substation, the land that the Project will traverse in Indiana is owned by Indiana Michigan Power Company, a subsidiary of AEP. Petitioner will require an easement from AEP in order to construct the Project in Indiana.

Ms. Rivera also noted several other approvals that Petitioner will need to secure. Petitioner expects to obtain several environmental approvals, permits, and licenses. The Project team has met with various agencies to introduce the Project and to identify relevant regulatory requirements. Petitioner must also get regulatory approval in all four states that it will traverse. Also, as an interstate transmission owner and operator, Petitioner will be regulated by the FERC and will file an application to FERC for authorization to sell transmission capacity at negotiated rates to interested generators and load serving entities.

6. OUCC's Case-in-Chief Evidence.

A. Direct Testimony of Ronald Keen, Senior Analyst within the Resource Planning and Communications Division at the OUCC. Mr. Keen testified that HVDC is a mature technology, and that the continued development of HVDC technology has led to the construction of an increasing number of point to point ("PTP") connections on almost every continent in the world. The logical next step would be to connect the lines to create a grid network, and then optimize the reliability of the network, enabling the balancing of loads and integration of intermittent renewable energy generation resources, which would lower transmission losses and facilitate energy trading across borders.

Mr. Keen further noted that there are advantages of an HVDC system over an HVAC transmission system. When comparing a bipolar HVDC transmission system to a double-circuit HVAC transmission system, investment costs for HVDC converter stations are higher than for an HVAC substation, but the operation and maintenance ("O&M") costs are lower for HVDC systems. Further, operators have more control over the direction and amount of power flowing through the HVDC system. The costs of infrastructure (overhead lines, cabling, etc.) and land acquisition/right-of-way costs are typically lower for HVDC transmission systems. Mr. Keen noted that the federal government GAO report has identified a number of advantages, including: (1) decreased congestion and improved reliability of the energy grid through the provision of access to additional energy generation assets and additional transmission paths; (2) lower costs to consumers at the end points where the HVDC system is integrated into the local distribution grids; (3) more effective utilization of existing generation assets and more competitive local wholesale energy markets; (4) facilitated development of new energy generation assets in locations outside population centers; and (5) facilitated development of renewable energy generation resources.

Mr. Keen also noted some disadvantages of HVDC over HVAC observed from that same GAO report, including diminished economic/aesthetic value of land when lines are built above ground, raised energy prices in areas from where energy is being taken, and reduced incentives

to identify alternatives that decrease demand for energy consumption. Mr. Keen further stated that when new infrastructure is added, consideration should be given to utilizing HVDC technology, depending on the parameters of the specific project.

Mr. Keen testified that the Grain Belt Project offers advantages to consumers. For example, the development and construction costs of the Project will be privately funded and reimbursed to the investors on a merchant-type basis, so that the ratepayer does not directly bear any of the cost, liability, or risk. Therefore, the ratepayer will not bear the brunt of a failed project. Mr. Keen further testified that the OUCG believes Petitioner has the technical and managerial capability to effectively and efficiently manage the Project. The Project's funding will depend on whether investors see the project as an attractive opportunity to realize an adequate return on their investment, while affording Petitioner the ability to provide energy to ratepayers at costs which are competitive.

Mr. Keen stated that the OUCG recommended Commission approval of Petitioner's request for declination of jurisdiction over Petitioner's construction, ownership and operation of, and other activities in connection with the Project. Additionally, the OUCG recommended the Commission require any reports filed with the Commission by Petitioner also be provided to the OUCG and other interested parties, and that Petitioner commit to the Commission and interested parties that it will not seek to recover costs of the construction and/or operation of the Project through the socialization of costs to transmission users in general, such as under an RTO tariff. Mr. Keen further stated that the OUCG believes that the reporting suggested by Petitioner will allow the Commission and the OUCG to effectively monitor the construction and operation of the Project because there is no need for extensive reporting requirements for a project with such a small physical footprint in the State.

7. Settlement Agreement and Supporting Testimony. The March 13, 2013 Settlement Agreement was entered into by all parties to this proceeding. The Settlement Agreement provides that it resolves all matters pending before the Commission in this Cause and is supported by substantial evidence.

A. Petitioner. Mr. Berry summarized the terms of the Settlement Agreement. He explained the Settlement Agreement states that Petitioner should obtain status as a transmission-only public utility in Indiana, which includes the right to exercise the power of eminent domain. The Settlement Agreement also states that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana. The Settlement Agreement states that Commission should give its consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23. The Settlement Agreement further provides that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM and/or MISO. The Settlement Agreement recommends that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial,

and financial capability), and certain public utility annual reporting requirements, as described in more detail below. Additionally, the Settlement Agreement provides that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC.

Mr. Berry noted that, as demonstrated by OUCC witness Keen's testimony, the OUCC did not take issue with most of Petitioner's requested relief. However, Mr. Berry addressed Mr. Keen's recommendation in his case-in-chief testimony that requested Petitioner commit to the Commission and interested parties that Petitioner will not, at any point in the future, seek to recover costs of the construction or operation of the Project from transmission users in general. Mr. Berry testified that while Petitioner currently has no plans to seek cost recovery for this Project through regional cost allocation, Petitioner is not in a position to make an irrevocable commitment not to seek cost allocation. He stated that such a commitment would be premature and would potentially go against the public interest. If regulations change in the future, an irrevocable commitment not to recover costs in a certain manner may compromise the ability of Petitioner to complete the Project.

Mr. Berry explained the Settlement Agreement's provisions concerning regional cost allocation. The Settlement Agreement reflects the fact that Petitioner has no present intent of seeking regional cost allocation for the Project and provides that Petitioner may not seek regional cost allocation for the Project unless it complies with the following requirements: (1) Petitioner must file a notice with the Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and further it must notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation; (2) Petitioner must submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study; (3) Petitioner must offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and (4) Petitioner must file with the Commission in this Cause additional and updated information concerning the Project, including: (a) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (b) Petitioner's continuing financial, technical and managerial capability to construct, own, operate, and manage the Project; (c) the status of the Project with the RTOs; and (d) other relevant information requested by the Commission. The Settlement Agreement provides that Petitioner will not object to a public hearing process on this issue. The Settlement Agreement goes on to explain that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for the above-described filing requirement, the settling parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project in Indiana. Finally, the Settlement Agreement states the parties' belief that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated

or modified without good cause, for example, a demonstration of inadequate financial, technical, or managerial capability.

Mr. Berry concluded that the Settlement Agreement is reasonable and in the public interest, and should be approved. Further, Petitioner has demonstrated, in its case-in-chief, that it has the technical, managerial, and financial capability to construct, own, and operate this Project.

B. OUCC. Mr. Keen noted that he still believes that the Project offers advantages to consumers. The Project, as presented to the Commission at this stage will not require ratepayers to directly bear any of the cost, liability, or risk for development and construction. These costs are to be privately funded and reimbursed to the investors on a merchant-type basis. However, there is a potential during either the MISO and/or the PJM planning process, either RTO could determine there are regional benefits as a result of the Project. Consequently, if all the qualifications for PJM or MISO regional cost sharing were met, costs associated with the Project could then be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

Mr. Keen further noted that if Petitioner sought cost allocation through an RTO, and a Commission proceeding were initiated, the parties would only be looking for such a proceeding to reaffirm Petitioner's continued financial, technical, and/or managerial capability with respect to the specific project, and that the OUCC would not seek to examine the reasonableness of the cost allocation or the Project itself in such a proceeding. Mr. Keen concluded that the OUCC recommends the Commission approve the proposed Settlement between the parties without modification.

8. Discussion and Findings. Petitioner has requested that the Commission make the following findings: (1) that Petitioner will be a public utility in the State of Indiana; (2) that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) that Petitioner should be granted authority to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements outlined below; (6) that Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) that the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; and (8) that certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure. With certain conditions, the Settlement Agreement recommends that such relief be granted. We discuss each of these requested findings below.

At the outset, however, we note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

A. **Public Utility Status.** Section 1 of the Public Service Commission Act defines “public utility” as:

every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the: (1) conveyance of telegraph or telephone messages; (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

Ind. Code § 8-1-2-1.

The evidence establishes that Petitioner’s ownership, development, financing, construction, and operation of the Project is for the purpose of transmitting wind power generated in western Kansas to public utilities, energy service providers, and power marketers within and outside of Indiana, via facilities to be owned both within and outside of Indiana. The Commission has found in prior cases that a business that transmits electricity to public utilities is itself a public utility. *See, e.g., AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000 (IURC, Nov. 2, 2011). In *AEP Indiana Michigan Transmission Co.*, the Commission specifically found that it had jurisdiction over a transmission only entity that would own and operate facilities in Indiana. Consequently, for purposes of the ownership, development, financing, construction, and operation of the Project, we find that Petitioner is a public utility within the meaning of Ind. Code § 8-1-2-1.

B. **Technical, Managerial and Financial Capability.** Petitioner submitted extensive evidence of its technical, managerial, and financial capability to construct, own, and operate the Project. Specifically, Mr. Skelly and Dr. Galli testified in detail about the Petitioner

team's background, experience, and expertise in the energy sector, project development, electricity transmission, and financing. Mr. Berry also testified about Petitioner's and its parent company's financial expertise, backing and investors. Accordingly, we find that Petitioner has the necessary technical, managerial, and financial capability to construct, own, and operate the Project.

C. Authority to Operate as a Public Utility in Indiana. In light of our findings that the Petitioner will be a "public utility" within the meaning of the Indiana Public Service Commission Act, and that the Petitioner possesses the necessary technical, managerial, and financial capability to construct, own, and operate the Project, we also find that Petitioner should be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.

D. Transfer of Functional Control of Transmission Facilities to RTO. Indiana Code § 8-1-2-83 provides that Commission approval is required for, among other things, contracts for the operation of any part of a public utility's works or system by another person. We have previously interpreted this provision as requiring Commission approval for a public utility to transfer functional control of its transmission system to a regional transmission organization, such as MISO or PJM. *See, e.g., Hoosier Energy Rural Elec. Coop. et al.*, Cause Nos. 42027 and 42032 (IURC, Dec. 17, 2001). We have also previously found that Indiana customers will benefit from Indiana public utilities' participation in either MISO or PJM, and that MISO and PJM both possess the capability to functionally operate regional transmission systems. Benefits of RTO participation include improved reliability and reduction in costs. *Id.*; *see also Indiana Michigan Power Company*, Cause Nos. 42350 and 42352. (IURC, Sep. 10, 2003). Accordingly, we find that the Petitioner should be authorized to transfer functional control of its Indiana transmission facilities to either MISO or PJM at the appropriate time.

E. Declination of Certain Jurisdiction. As noted above, Petitioner has requested, and the Settlement Agreement recommends, that the Commission should decline jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements.

The Commission has concluded that the Petitioner will be a "public utility" as defined by the Public Service Commission Act. Indiana law also authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an "energy utility" if certain public interest conditions are satisfied. In particular, "the Commission may enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility. . . ." Ind. Code § 8-1-2.5-5(a). Indiana Code § 8-1-2.5-2 defines "energy utility" to mean, among other things, a public utility within the meaning of Ind. Code § 8-1-2-1. Because we determined the Petitioner to be a "public utility" under Ind. Code § 8-1-2-1, the Petitioner is an "energy utility."

In determining whether the public interest will be served by our declining to exercise some of our jurisdiction, as requested by Petitioner and the Settlement Agreement, Indiana Code

§ 8-1-2.5-5(b) states that the Commission shall consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the Commission unnecessary or wasteful.
 - (2) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
 - (3) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
 - (4) Whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.
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The evidence in this Cause demonstrates that the Petitioner does not intend to, nor does it request authority to, engage in retail sales of electricity to the general public or to any retail customer. Instead, Petitioner will provide only wholesale-level transmission services to generators and wholesale purchasers. More specifically, Petitioner will offer transmission service on the Grain Belt Project through an OATT, which will be filed with, and subject to the jurisdiction of FERC under the Federal Power Act and FERC's regulations. Petitioner expects that its customers will consist principally of (1) wind energy producers located in the wind-rich Resource Area at the western end of the Grain Belt Project, and (2) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located in Indiana or connected to the eastern end of the Project through the existing, interconnected transmission grid. Buyers of electricity are expected to be principally wholesale buyers, such as utilities, competitive retail electricity suppliers, including certified alternative retail electricity suppliers, brokers, and marketers.

Further, the evidence indicates that the Project will provide benefits to the state of Indiana and the region. These benefits include the delivery of approximately 15 million MWh of renewable energy per year; cost effectively meeting growing demand for renewable energy; and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines. The Project will also have a positive impact on the environment by reducing the need for energy from other sources that will therefore reduce emissions of carbon dioxide, SO₂, NO_x and mercury. Additionally, the Project will also reduce water withdrawal and evaporation required for cooling thermal power plants. Finally, the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM transmission systems, thereby reducing variability, facilitating wind integration, and improving reliability.

Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission finds exercising limited jurisdiction over Petitioner and the Project, as requested, will facilitate the development of the proposed Project and will facilitate the transmission and delivery of wind energy from the west to the MISO and PJM regions. This should be beneficial for public utilities

and other purchasers in these regions, including the State of Indiana and will support energy utility efficiency. Petitioner has shown that it will be regulated by the FERC in many respects, and that full state regulation of the Project would thus be unnecessary. Petitioner has also shown that the wholesale market for electricity in Indiana will likely benefit from the ability of the Petitioner to transmit cost effective wind energy to the MISO and PJM regions. Accordingly, we conclude that the Commission's decision to decline some of the exercise of its jurisdiction over Petitioner meets the conditions outlined in Ind. Code § 8-1-2.5-5.

The Commission thus finds that a partial declination of jurisdiction over Petitioner as an energy utility, as requested, is in the public interest. Accordingly, we will decline to exercise a portion of our jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability),¹ and certain public utility annual reporting requirements, as described in more detail below. However, if the Commission determines that the Petitioner either has failed to commence construction of the Project under this Order or is no longer diligently pursuing the commencement of construction of the Project, or otherwise determines that the public interest is served by a declination of full jurisdiction, then the Commission may, following notice to the Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein.

F. Reporting Requirements. Consistent with the terms of the Settlement Agreement, it shall be a condition of this Order and our continued declination of jurisdiction over the Petitioner to do the following:

1. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates should summarize the Project construction and operational status and financing milestones, including:
 - a. identification of major construction vendors and contractors hired;
 - b. identification of major operation and maintenance contractors retained;
 - c. significant new debt and equity financings completed at the Petitioner level; and
 - d. significant changes in Clean Line's or Petitioner's senior management.

¹ Specifically, Petitioner shall not be required to seek prior approval of any transfers of ownership of Project assets or ownership interests in the Petitioner involving: (1) the grant of a security interest to a bank or other lender or collateral agent, administrative agent, or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing); (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor satisfies the same or similar terms and conditions imposed on Petitioner as set forth in this Order.

2. File annually with the Commission its FERC Form 1, which will describe Petitioner's assets and revenues (in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service.
 3. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which the Petitioner does not anticipate having).
 4. Maintain the Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.
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A responsible officer of the Petitioner shall verify all reports. The Petitioner shall provide two (2) paper copies and one (1) electronic copy of all such reports under this Cause, and to the OUCC, on an annual basis.

G. Cost Recovery. The Settlement Agreement, entered into between the Petitioner and the OUCC (collectively the "Parties"), is premised in part upon Petitioner's representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with certain specific requirements. However, the parties have agreed that such requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs; nor will such requirements be applicable in the case of a regional transmission organization's cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

The specific requirements and commitments specified in the Settlement Agreement are as follows:

If in the future Petitioner seeks recovery of Project costs from Indiana retail ratepayers through a PJM or MISO regional cost allocation process by submitting the Project into the applicable regional transmission expansion plan for purposes of cost allocation, then prior to exercising its rights under the Indiana Commission's authorization by commencing construction of the Project, Petitioner commits to do the following:

1. File a notice with the Indiana Utility Regulatory Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation;

2. Submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study;
3. Offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and
4. File with the Commission in this Cause No. 44264 additional and updated information concerning the Project, including: (1) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (2) Petitioner's continuing financial, technical, and managerial capability to construct, own, operate, and manage the Project; (3) the status of the Project with the RTO(s); (4) other relevant information requested by the Commission. If requested by the OUCC or directed by the Commission, Petitioner will not object to an examination of this filing through a public hearing process.

The parties agree that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for this filing requirement, the parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made, with Commission input as desired, in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project and Indiana. The parties further agree that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

The parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Petitioner's Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

The parties also acknowledge that nothing in this settlement agreement or in the Commission order to be issued in this proceeding shall constitute a waiver by the Commission or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project. Further, if Petitioner proposes to construct, own or operate any other transmission facilities in Indiana in addition to those associated with the Grain Belt Project, it shall provide the Commission and the OUCC thirty days written notice of the project before seeking RTO or FERC approval. This requirement is consistent with our Order in *Pioneer Transmission*, Cause No. 44135, at 7 (Apr. 17, 2013).

In our view, these requirements strike a reasonable balance between the OUCC's concerns with regional cost allocation for this Project on the one hand, and the Petitioner's need to be able to compete with other providers of functionally similar energy services, on the other.

Indeed, we note that Indiana Code § 8-1-2.5-5(b) specifically directs us to consider “whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.” Accordingly, we find that these provisions are reasonable and should be approved.

H. Location of Books and Records. Petitioner proposed, and the Settlement Agreement provides, that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. We grant Petitioner the authority to locate its books and records outside Indiana. Upon reasonable notice, Petitioner shall produce in Indiana copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Petitioner to produce the necessary books and records in Indiana, Petitioner must reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner’s books and records outside of Indiana.

I. Consent to Boards of County Commissioners. The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant the Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways, and other public rights-of-way for the provision of its services and facilities, pursuant to Indiana Code § 36-2-2-23. This is consistent with our order in *AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000, (IURC, Nov. 2, 2011).

J. Confidentiality. On December 19, 2012, the Petitioner filed a Motion for Protection of Confidential and Proprietary Information (“Motion”), supported by the affidavit of David Berry. The affidavit indicates that such confidential information (“Confidential Information”) constitutes a trade secret and that the Petitioner has taken all reasonable steps to protect the confidential information from disclosure. On January 10, 2013, the Presiding Officers issued Docket Entries granting confidential treatment to the Confidential Information on a preliminary basis.

Based on the foregoing, pursuant to Ind. Code § 5-14-3-4(a)(4), we find that the financial information concerning the Petitioner’s private equity investors presented in this proceeding constitute “trade secrets” and should be afforded confidential treatment. Accordingly, this information is exempted from public disclosure and will be held as confidential by the Commission.

K. Approval of the Settlement Agreement. Based on the evidence presented and our findings above, we find the Settlement Agreement is a reasonable, balanced, and comprehensive resolution of the issues in this Cause. While an independent transmission company is a significant departure from the traditional regulatory construct in Indiana, the Commission finds it to be acceptable in this instance, in which the Project will provide many public interest benefits both economically and environmentally. In addition, the Settlement Agreement gives further assurance and provides that Petitioner’s operations should be transparent, accountable, and compliant with the Commission’s regulations and should not

adversely affect Indiana consumers. The Settlement Agreement also provides for ongoing communication among the parties and the filing and sharing of information related to certain aspects of Petitioner's operations. Taken together, the terms of the Settlement Agreement serve the public interest and satisfy the important public policy of fostering settlement over litigation. Therefore, the Commission finds that the Settlement Agreement is reasonable, in the public interest, and should be approved.

Finally, the parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC, March 19, 1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Settlement Agreement shall be and hereby is approved.
2. The terms and conditions of the Settlement Agreement shall be and hereby are incorporated herein as a part of this Order, and the parties shall abide by the terms of the Settlement Agreement and this Order.
3. Petitioner is hereby determined to be a "public utility" within the meaning of Ind. Code § 8-1-2-1, and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.
4. Petitioner shall be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.
5. Petitioner shall be authorized to transfer functional control of its Indiana transmission facilities to MISO or PJM.
6. The Commission declines to exercise a portion of its jurisdiction over Petitioner and its construction, operation, and financing of the Project, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as delineated in this Order.
7. Petitioner shall have the authority to maintain its books and records outside the State of Indiana, subject to the conditions outlined in this Order.
8. The Commission consents to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises, as may be necessary for Petitioner to use county roads, highways, or other property and public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23.
9. Petitioner shall comply fully with the terms of this Order and submit to the

Commission all information required by the terms of this Order.

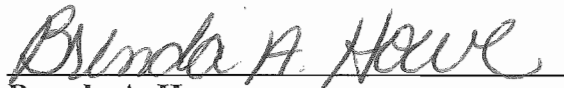
10. Petitioner's Confidential Information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure.

11. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, MAYS AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: MAY 22 2013

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Brenda A. Howe
Secretary to the Commission**

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC FOR: (1) A DETERMINATION OF ITS STATUS AS A "PUBLIC UTILITY" UNDER INDIANA LAW; (2) A DETERMINATION THAT IT HAS THE TECHNICAL, MANAGERIAL, AND FINANCIAL CAPABILITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA; (3) AUTHORITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA, INCLUDING AUTHORITY TO EXERCISE ALL RIGHTS AND PRIVILEGES OF A PUBLIC UTILITY ACCORDED BY INDIANA LAW; (4) AUTHORITY TO TRANSFER FUNCTIONAL CONTROL OF OPERATION OF ITS TRANSMISSION FACILITIES TO BE CONSTRUCTED IN INDIANA TO A FULLY-FUNCTIONING REGIONAL TRANSMISSION ORGANIZATION; (5) A DETERMINATION THAT THE COMMISSION SHOULD DECLINE TO EXERCISE CERTAIN ASPECTS OF ITS JURISDICTION OVER GRAIN BELT EXPRESS CLEAN LINE LLC; (6) AUTHORITY TO LOCATE ITS BOOKS AND RECORDS OUTSIDE THE STATE OF INDIANA; (7) CONSENT BY THE COMMISSION TO BOARDS OF COUNTY COMMISSIONERS FOR GRAIN BELT EXPRESS CLEAN LINE LLC TO OCCUPY PUBLIC RIGHTS OF WAY, TO THE EXTENT IT MAY BE NECESSARY; AND (8) ALL OTHER APPROPRIATE RELIEF	CAUSE NO. 44264
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STIPULATION AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and among Grain Belt Express Clean Line LLC ("Grain Belt Express") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties" and individually "Party"). The Parties having been duly advised by their respective staff, experts and counsel, and solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters in this proceeding pending before the Indiana Utility Regulatory Commission ("Commission"), subject to their incorporation into a final, non-

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

appealable order ("Final Order") of the Commission without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

WITNESSETH:

WHEREAS, Grain Belt Express petitioned the Commission for approval, to the extent necessary for status as a "public utility" and for related regulatory relief as set forth in the Petition in this Cause dated November 2, 2012, and has supported such request with prepared testimony and exhibits filed in this proceeding;

WHEREAS, the OUCC has analyzed the Petitioner's filing, conducted discovery and otherwise given consideration to the relief sought by Petitioner in this Cause;

WHEREAS, Grain Belt Express and the OUCC agree that the OUCC and the Commission should have necessary information available on a forward going basis to understand and assess Grain Belt Express' construction and operations;

WHEREAS, Grain Belt Express and the OUCC agree that the Petitioner's operations should be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

A. SUBSTANTIVE TERMS AND CONDITIONS

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

1. **Public Utility Status.** The Parties agree that the Commission should approve Grain Belt Express' status as a public utility in Indiana. This status includes exercising all rights and privileges of public utilities under Indiana law, including the right to exercise the power of eminent domain. The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant Grain Belt Express such licenses, permits or franchises as may be necessary for Grain Belt Express to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to IC 36-2-2-23.

2. **Technical, Managerial, and Financial Capability.** The Parties agree that Grain Belt Express possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana.

3. **Transferring Functional Control.** The Parties agree that Grain Belt Express should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM Interconnection, LLC ("PJM") and/or Midwest Independent Transmission System Operator, Inc. ("MISO").

4. **Partial Declination of Commission Jurisdiction.** The Parties agree that the Commission should decline to exercise a limited portion of its jurisdiction over Grain Belt Express, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as described in more detail below.

5. **Grain Belt Express' Books and Records.** The accounting, financial and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Grain Belt Express (along with the other subsidiaries of Clean Line), including maintenance of Grain Belt Express' accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Due to the

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

nature of its business and operations, Grain Belt Express will be operating in, and potentially will be subject to the jurisdiction of regulators in, at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Grain Belt Express to maintain its books and records in Indiana, or at any location other than the principal office of Grain Belt Express and its parent company in Houston, Texas.

Therefore, the Parties agree that Grain Belt Express should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. Grain Belt Express commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the Office of Utility Consumer Counselor ("OUCC") and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Grain Belt Express to produce the necessary books and records in Indiana, Grain Belt Express commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Grain Belt Express' books and records outside of Indiana.

6. Cost Recovery. This Settlement is premised in part upon Grain Belt Express' representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with the requirements of a., b., c., and d. of this Section 6, below. Provided, however, the following requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs. Provided further, that the following requirements are not applicable to a regional transmission organization's ("RTO") cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

If in the future Grain Belt Express seeks recovery of Project costs from Indiana retail ratepayers through a PJM or MISO regional cost allocation process by submitting the Project into the applicable regional transmission expansion plan for purposes of cost allocation, then prior to exercising its rights under the Indiana Commission's authorization by commencing construction of the Project, Grain Belt Express commits to do the following:

- a. File a notice with the Indiana Utility Regulatory Commission informing the IURC (and the OUCC) of Grain Belt Express' decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and notify the IURC and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation;
- b. Submit to the IURC and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study;
- c. Offer no objection to the participation of the IURC or the OUCC before the applicable RTO and the Federal Energy Regulatory Commission ("FERC") with respect to regional cost allocation decisions relating to Indiana and the Project; and
- d. File with the IURC in this Cause No. 44264 additional and updated information concerning the Project, including: (1) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (2) Grain Belt Express' continuing financial, technical and managerial capability to construct, own, operate, and manage the Project; (3) the status of the Project vis a vis the RTO(s); (4) other relevant information requested by the IURC. If requested by the OUCC or directed by the IURC, Grain Belt Express will not object to an examination of this filing through a public hearing process.

The Parties agree that, although a Grain Belt Express request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for this filing requirement, the Parties' intended purpose of such a proceeding should not be to examine the

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

reasonableness of regional cost allocation, as those decisions will be made, with IURC input as desired, in FERC and/or RTO forums; rather, the Parties' intended purpose of the proceeding should be limited to examining Grain Belt Express' continuing financial, technical, or managerial capability with respect to this Project and Indiana. The Parties further agree that Grain Belt Express' authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

The Parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Grain Belt Express' Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Grain Belt Express.

The Parties also acknowledge that nothing in this settlement agreement or in the IURC order to be issued in this proceeding shall constitute a waiver by the IURC or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project.

7. **Reporting Requirements.** In lieu of Commission jurisdiction over certain aspects of the Project, Grain Belt Express will commit to do the following:

- a. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates will summarize the Project construction and operational status and financing milestones, including:
 - i. identification of major construction vendors and contractors hired,
 - ii. identification of major operation and maintenance contractors retained,
 - iii. significant new debt and equity financings completed at the Grain Belt Express level, and
 - iv. significant changes in Clean Line Energy Partners LLC or Grain Belt Express senior management.
- b. File annually with the Commission its FERC Form 1, which will describe all of Grain Belt Express' assets and revenues (in lieu of the annual report requirements

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service,

- c. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which Petitioner does not anticipate having).
 - d. Maintain Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.
-

B. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION

1. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is not severable and should be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

2. The Parties shall jointly move for leave to file this Settlement and supporting evidence. Such evidence will be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties propose to submit this Settlement and evidence conditionally, and that, if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 44264 with the proceedings resuming at the point they were suspended by the filing of this Settlement.

3. A Final Order approving this Settlement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Parties as an Order of the Commission.

C. EFFECT AND USE OF SETTLEMENT

1. It is understood that this Settlement is reflective of a negotiated settlement and neither the making of this Settlement nor any of its provisions shall constitute an admission by any Party to this Settlement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement is in consideration and support of each and every other term.

2. This Settlement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement.

3. This Settlement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Parties agree that the evidence filed in this proceeding constitutes substantial evidence sufficient to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors

SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

and assigns, who will be bound thereby.

7. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding (except as allowed for within the terms of the Settlement).

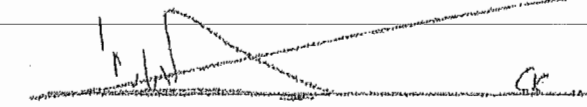
8. The provisions of this Settlement shall be enforceable by any Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

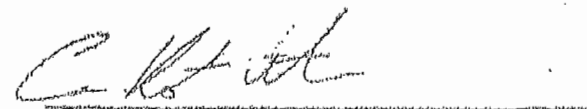
SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

ACCEPTED and AGREED to, as of this 13th day of MARCH, 2013.

GRAIN BELT EXPRESS CLEAN LINE LLC

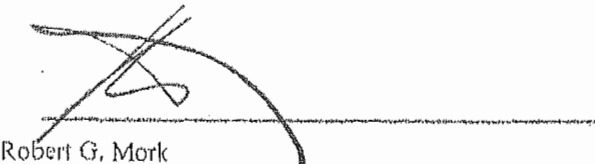
A handwritten signature in dark ink, appearing to be "Michael Skelly", written over a horizontal line.

Michael Skelly
President

A handwritten signature in dark ink, appearing to be "Cary Kottler", written over a horizontal line.

Cary Kottler
Secretary

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

A handwritten signature in dark ink, appearing to be "Robert G. Mork", written over a horizontal line.

Robert G. Mork
Deputy Consumer Counselor for Federal Affairs, Indiana Office of Utility Consumer Counselor